

BEFORE THE OFFICE OF THE COMMISSIONER OF RAILROADS

STATE OF WISCONSIN

Petition of the Wisconsin Department of Transportation for the Alteration of a Public Crossing of the BNSF Railway Company Tracks with Interstate 90 in the City of Onalaska, La Crosse County

9020-RX-155

FINAL DECISION

By letter dated September 7, 2005, the Wisconsin Department of Transportation (DOT) filed a petition with the Office of the Commissioner of Railroads (OCR) under §§195.28 and 195.29, Stats., for the alteration of a public crossing of the BNSF Railway Company (BNSF) tracks with Interstate 90 in the City of Onalaska, La Crosse County (crossing no. 079 895T/ MP 302.53). The DOT proposes to widen the existing structures carrying I-90 over the BNSF tracks in 2006.

DOT also proposes to retain the existing 22' 5" and 22' 6" vertical clearances over the tracks. Section 192.31, Stats., requires a minimum vertical clearance of 23'. DOT seeks an exemption from the railroad track clearance law.

Pursuant to due notice, public hearing was held in this matter on November 1, 2005 in Madison, Wisconsin with hearing examiner Douglas S. Wood presiding.

On January 9, 2006, the hearing examiner issued a proposed decision. By letter dated January 12, the DOT filed comments supporting the proposed decision. The Commissioner adopts the proposed decision as final without change.

Appearances:

**Parties**

Wisconsin Department of Transportation, Petitioner  
by  
Allyn Lepeska  
Attorney  
4802 Sheboygan Avenue  
Room 115B  
Madison, WI 53702

As Interest May Appear:

BNSF Railway Company  
by  
Glenn Olander-Quamme  
Attorney  
325 Cedar Street  
Suite 600  
St. Paul, MN 55101

The BNSF initially raised certain jurisdictional objections. Subsequent to the hearing the BNSF and DOT entered into a stipulation that rendered the jurisdictional objections moot. The BNSF withdrew its objections and requested that the OCR issue an order in conformity with the stipulation.

### Findings of Fact

#### THE COMMISSIONER FINDS:

The DOT proposes to widen the existing structures carrying I-90 over the BNSF tracks in 2006. The existing structures cross 6 tracks of the BNSF.

The project will widen and re-deck the structures. The widening will allow for a future third traffic lane in each direction. The extra width will also allow for two lanes of traffic in each direction during future highway construction projects.

Interstate 90 carried 17,340 ADT (average daily traffic) eastbound and 17,460 ADT westbound in 2005.

The railroad currently operates about 40 train movements per day under Interstate 90 at this location at a speed of 35 mph.

The alteration of the grade-separated crossing of the BNSF Railway Company tracks with Interstate 90 will promote public safety and convenience by providing continued grade-separated crossings and by making provision for a future third lane in each direction and for future construction detours.

DOT also proposes to retain the existing 22' 5" (south bridge B-32-39) and 22' 6" (north bridge B-32-40) vertical clearances over the tracks. Section 192.31, Stats., requires a minimum vertical clearance of 23'. DOT seeks an exemption from the track clearance law, including the requirement for telltales.

Wisconsin law requires a minimum of 23' vertical clearance. The petitioner seeks exemption from this requirement. Construction of the Interstate 90 bridges with vertical clearances of 22' 5" and 22' 6" will not imperil life and limb, and the public interest permits such construction without telltales.

**Source of funding:** The highway project shall pay the costs for the bridge construction.

### Ultimate Conclusions on the Issues

#### THE COMMISSIONER CONCLUDES:

1. That the alteration of the grade-separated crossing of Interstate 90 with the BNSF Railway Company tracks in accordance with the design plans of the Wisconsin Department of Transportation in the City of Onalaska, La Crosse County will promote public safety and convenience.

2. That it is reasonable that the BNSF Railway Company bear no part of the cost for the crossing construction.

3. That construction of the Interstate 90 bridges with vertical clearances of 22' 5" and 22' 6" will not imperil life and limb, and the public interest permits such construction without telltales.

## Conclusion of Law

### THE COMMISSIONER CONCLUDES:

That the jurisdiction of the Office of the Commissioner of Railroads under §§192.31 and 195.29, Stats., extends to this matter. Accordingly, the Office enters an order consistent with the findings of fact.

### Order

### THE COMMISSIONER ORDERS:

1. That the **Wisconsin Department of Transportation** is authorized to construct a grade-separated crossing of **Interstate 90** with the tracks of the **BNSF Railway Company** as proposed by it in the City of Onalaska, La Crosse County (crossing no. 079 895T/ MP 302.53).

2. That the terms of the signed stipulation entitled "STIPULATION BY AND BETWEEN THE STATE OF WISCONSIN, DEPARTMENT OF TRANSPORTATION, AND BNSF RAILWAY COMPANY, Project I.D. 1071-06-64, I-90 OVERPASS, Structures B-32-39/40, Located at the intersection of the St. Croix Subdivision of BNSF Railway Company and Interstate Highway 90 in the CITY OF LA CROSSE, LA CROSSE COUNTY WISCONSIN" are incorporated in this order by reference.

3. That an exemption from the railroad clearance and telltale requirements of section 192.31 Wis. Stats. is hereby granted with respect to **Interstate 90** overpasses (crossing no. 079 895T/ MP 302.53). That the nominal minimum vertical clearance shall be 22' 5" from the top of rail of track 4 to girder 4 on the south bridge (B-32-39) and 22' 6" from the top of rail of track 4 to girder 1 on the north bridge (B-32-40).

4. That the **BNSF Railway Company** shall bear no part of the cost of the crossing construction, except for any cost assessed to the railroad pursuant to §195.60, Stats., for the investigation of this matter by the Office. The railroad shall not pass on those assessment costs either directly or indirectly.

5. That jurisdiction is retained.

Dated at Madison, Wisconsin, (January 27, 2006).

By the Office of the Commissioner of Railroads.

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Rodney W. Kreunen  
Commissioner of Railroads